

Amendment No. 1 to HB3164

Coleman  
Signature of Sponsor

**AMEND Senate Bill No. 3134**

**House Bill No. 3164\***

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by deleting Part 28 in its entirety and by substituting instead the following language:

67-4-2801. The purpose of this part is to levy a tax on every merchant of unauthorized substances to generate revenue for state and local law enforcement agencies for use by those agencies to investigate, combat, prevent and reduce drug crimes, and for the general fund. Such tax shall be measured by the quantity of unauthorized substances sold, bartered, traded, or distributed to another for consideration or the quantity of unauthorized substances possessed with intent to sell, barter, trade, or distribute to another for consideration. This is not a criminal statute. It is a civil taxing measure contributing to the general revenue fund and a civil remedial measure designed to mitigate against the enormous costs of law enforcement related to drug control for state and local government. Nothing in this part may in any manner provide immunity from criminal prosecution for a person who possesses an illegal substance.

67-4-2802. As used in this part, unless the context clearly requires otherwise:

- (1) "Commissioner" means the commissioner of revenue;
- (2) "Controlled substance" means a controlled substance as defined in § 39-17-402, and not included in "low-street-value drugs";
- (3) "Illicit alcoholic beverage" means an alcoholic beverage, as defined in § 57-3-101, not authorized by the Tennessee alcoholic

beverage commission. "Illicit alcoholic beverage" includes, but is not limited to, the products known as "bootleg liquor," "moonshine," "non-tax-paid liquor," and "white liquor;"

(4) "Local law enforcement agency" means a municipal police department, a metropolitan police department, or a sheriff's office;

(5) "Low-street-value drug" means any of the following controlled substances:

(A) An anabolic steroid as defined in § 39-17-410(f);

(B) A depressant described in § 39-17-412(c);

(C) A hallucinogenic substance described in § 39-17-406(d);

(D) A stimulant described in § 39-17-412(e); or

(E) A controlled substance described in § 39-17-414;

(6) "Marijuana" means all parts of the plant of the genus cannabis, whether growing or not; the seeds of this plant; the resin extracted from any part of this plant; and every compound, salt, derivative, mixture, or preparation of this plant, its seeds, or its resin;

(7) "Merchant" means a merchant or peddler within the scope of Article II, Section 28 of the Constitution of Tennessee and includes any person who sells, barter, trades, or distributes to another for consideration any unauthorized substances in a quantity sufficient to create a principal tax liability of at least ten thousand dollars (\$10,000) under § 67-4-2803(a). Any person who actually or constructively possesses, at a particular time, any unauthorized substances in a quantity sufficient to create a principal tax liability of at least ten thousand dollars (\$10,000) under § 67-4-2803(a) is presumed to be possessing the unauthorized substances for the purpose of sale, barter, trade, or distribution to another for consideration and is presumed to be a

merchant within the meaning of this subsection; such presumption may be rebutted only by clear and convincing evidence that such person did not sell, barter, trade, or distribute for consideration such substances or intend to do so;

(8) "Person" means person as defined in § 39-17-402;

(9) "State law enforcement agency" means any state agency, force, department, or unit responsible for enforcing criminal laws; and

(10) "Unauthorized substance" means a controlled substance, a low-street-value drug or an illicit alcoholic beverage.

67-4-2803.

(a) A tax, as follows, is levied on and payable by any merchant of unauthorized substances:

(1) Forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant;

(2) Three dollars and fifty cents (\$3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (a)(1) or plants with foliation taxed under subdivision (a)(3);

(3) Three hundred fifty dollars (\$350) per plant, whether growing or detached from the soil, on each marijuana plant with foliation;

(4) Fifty dollars (\$50.00) for each gram, or fraction thereof, of cocaine;

(5) Two hundred dollars (\$200) for each gram, or fraction thereof, of any other controlled substance or low-street-value drug that is sold by weight;

(6) Fifty dollars (\$50.00) for each ten (10) dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight;

(7) Two hundred dollars (\$200) for each ten (10) dosage units, or fraction thereof, of any other controlled substance that is not sold by weight;

(8) Thirty-one dollars and seventy cents (\$31.70) for each gallon, or fraction thereof, of illicit alcoholic beverages sold by the drink; or

(9) Twelve dollars and eighty cents (\$12.80) for each gallon, or fraction thereof, of illicit alcoholic beverages not sold by the drink.

(b) A quantity of marijuana or other unauthorized substance is measured by the weight of the substance whether pure, impure or dilute, or by the number of dosage units in the merchant's possession when the substance is not sold by weight. A quantity of an unauthorized substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

(c) For purposes of this part, a person constructively possesses an unauthorized substance when the person has:

(1) Knowledge of the unauthorized substance; and

(2) The ability and intention to exercise control over the unauthorized substance.

67-4-2804.

(a) The tax levied in this part does not apply to an unauthorized substance in the possession of a merchant who is authorized by law to possess the substance. This exemption applies only during the time the

merchant's possession of the unauthorized substance is authorized by law.

(b) The tax levied in this part does not apply to the following marijuana:

(1) Harvested mature marijuana stalks when separated from and not mixed with any other parts of the marijuana plant;

(2) Fiber or any other product of marijuana stalks described in subdivision (b)(1), except resin extracted from the stalks;

(3) Marijuana seeds that have been sterilized and are incapable of germination; or

(4) Roots of the marijuana plant.

67-4-2805.

(a) The commissioner shall issue stamps to affix to unauthorized substances to indicate payment of the tax by the merchant required by this part. A merchant shall report the taxes payable under this part at the time and on the form prescribed by the commissioner. The merchant is not required to give the merchant's name, address, social security number, or any other identifying information on the form. Upon payment of the tax, the commissioner shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

(b) Every local law enforcement agency and every state law enforcement agency must report to the department of revenue within forty-eight (48) hours after seizing an unauthorized substance from or making an arrest of a merchant under this part when the appropriate stamps as required by this part have not been affixed to the unauthorized substances. The report shall be in the manner prescribed by the

commissioner and shall include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of any merchant and such merchant's social security number, and any other information prescribed by the commissioner.

67-4-2806.

(a) The tax imposed by this part pursuant to § 67-4-2803, evidenced by a stamp issued by the commissioner and permanently affixed to unauthorized substances pursuant to subsection (b), is payable by a merchant within forty-eight (48) hours after the merchant acquires actual or constructive possession of unauthorized substance on which a stamp has not been affixed, exclusive of Saturdays, Sundays, and legal holidays of this state, in which case the tax is payable on the next working day. If the tax is not paid within forty-eight (48) hours, the tax shall become delinquent and shall accrue penalty and interest pursuant to the provisions of chapter 1, part 8 of this title.

(b) Upon payment of the tax and receipt of the tax stamps, the merchant shall permanently affix the appropriate stamps to the unauthorized substance.

(c) Once the tax due levied pursuant to this part has been paid, no additional tax is due and payable by a merchant in accordance with this part who may subsequently acquire or handle the unauthorized substance on which an appropriate stamp has been affixed.

(d) If a merchant is found in possession of a substance taxable under this part on which an appropriate stamp has not been affixed, it shall be presumed the merchant has been in possession of such substance for longer than forty-eight (48) hours, exclusive of Saturdays, Sundays, and legal holidays of this state.

67-4-2807. Notwithstanding any other law, an assessment against a merchant under this part on which a stamp has not been affixed as required by this part shall be made as provided in this section. The commissioner shall assess the tax, applicable penalty, and interest based on any information brought to the attention of the commissioner, or the commissioner's duly authorized assistants, that a merchant is liable for unpaid tax pursuant to this part. The tax shall be assessed in the same manner as any other tax assessment, except when this part specifies otherwise. The commissioner shall notify the merchant in writing of the amount of the tax, penalty, and interest due. The notice of assessment shall be either mailed to the merchant at the merchant's last known address or served on the merchant in person. If the merchant does not pay the tax, penalty, and interest upon receipt of the notice of assessment, the commissioner shall collect the assessment, including penalty and interest, pursuant to the procedures set forth in chapter 1, parts 14 and 18, of this title. The merchant may seek review of the assessment as provided in chapter 1, part 18, of this title. Section 67-1-1802 is applicable to the tax levied by this part.

67-4-2808.

(a) Notwithstanding any other provision of law, information obtained as a result of a merchant's efforts to comply with this part is confidential and, unless obtained independently from any acts undertaken by a merchant to comply with the tax levied by this part, such acts, including the taxpayer's maintenance of a suit to determine liability under the tax levied by this part, may not be disclosed by the commissioner or used in a criminal prosecution other than a prosecution for a violation of this part.

(b) The provisions of chapter 1, part 17, of this title, including the criminal penalties specified therein, shall apply to the tax levied under this part, except that no information shall be disclosed pursuant to chapter 1,

part 17, of this title unless that information was obtained independently from any acts undertaken by a merchant to comply with the tax levied by this part, such acts including the taxpayer's maintenance of a suit to determine liability under the tax levied by this part.

(c) This section does not prohibit the commissioner from publishing statistics that do not disclose the identity of merchants or the contents of particular returns or reports.

67-4-2809.

(a) The commissioner shall credit the proceeds of the tax levied by this part to a special nonreverting account to be called the state unauthorized substances tax account, until the tax proceeds are unencumbered. The commissioner shall remit the unencumbered tax proceeds as provided in this section on a quarterly or more frequent basis.

(b)

(1) Tax proceeds are unencumbered when:

(A) The tax has been paid and the collection process completed; and

(B)

(i) The taxpayer has no current right to file a refund claim, and the paid tax is not the subject of any pending lawsuit for the recovery of that tax; or

(ii) The time for the taxpayer to file suit pursuant to § 67-1-1802(c) has expired.

(2)

(A) The commissioner shall first apply the unencumbered tax proceeds to the costs of storing and disposing of the assets seized in payment of the

assessment under this part and then to the costs incurred by the commissioner due to implementation and enforcement of this part, which costs shall be added to and become part of the assessment.

(B)

(i) From the remaining proceeds, the commissioner shall remit seventy-five percent (75%) of the unencumbered tax proceeds that were collected by assessment to the state or local law enforcement agency that conducted the investigation of a merchant that led to the assessment. Such proceeds are to be used by the agency solely for the purpose of investigating, combating, preventing, and reducing drug crimes.

(ii) If more than one (1) state or local law enforcement agency conducted the investigation, then the commissioner shall determine the equitable share for each agency based on the contribution each agency made to the investigation.

(iii) The commissioner's determination of the equitable share for each agency shall be final and shall not be subject to review in an administrative or judicial proceeding.

(C) The commissioner shall credit the remaining unencumbered tax proceeds to the general fund.

(c) Notwithstanding any other provision of this section, in the event the tax levied by this part is voluntarily paid to the department of revenue, and not as a result of an investigation or arrest by a state or

local law enforcement agency, such voluntarily paid tax shall be considered unencumbered upon payment, and the commissioner shall credit the entire tax proceeds to the general fund.

67-4-2810. The provisions of this part shall not be construed to confer any immunity from criminal prosecution or conviction for a violation of title 39, chapter 17, part 4, upon any person who voluntarily pays the tax imposed by this part or who otherwise complies with the provisions of this part.

67-4-2811. The commissioner shall have the authority to promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement, administer and enforce the provisions of this part.

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect July 1, 2010, the public welfare requiring it.